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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 224

FORREST G. GOOD, ET AL.,
Appellants,

vs.

THE DOW CHEMICAL COMPANY

APPEAL FROM THE COURT OF CIVIL APPEALS OF THE STATE OF TEXAS

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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INDEX

Subject Index

	Page
Statement in opposition to appellants' statement of jurisdiction and motion to dismiss or affirm	1
Statement of issue on appeal	1
The facts	2
No substantial federal question is presented by the appeal	4

Table of Cases Cited

Breard v. *City of Alexandria*, 341 U.S. 622, 71 S. Ct. 920, 95 L. ed. 1233	5
Hague v. *C. I. O.*, 307 U.S. 496	4
Hall v. *Virginia*, 188 Va. 72, 49 S. E. 2d 369, 335 U.S. 875, 912	5
Marsh v. *Alabama*, 326 U.S. 501	4
Niemotko v. *Maryland*, 340 U.S. 268	4
Tucker v. *Texas*, 326 U.S. 517	4
Watchtower Bible and Tract Society, Inc. v. *Metropolitan Life Ins. Co.*, 297 N. Y. 339, 79 N. E. 2d 433, 335 U.S. 886, 912	5

IN THE COURT OF CIVIL APPEALS
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS
SITTING AT GALVESTON

No. 12,374

FORREST G. GOOD, ET AL.,
Appellants,

vs.

THE DOW CHEMICAL COMPANY,
Appellee

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT IN OPPOSITION TO APPELLANTS' STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

The Appellee in the above entitled cause for its statement in opposition to Appellants' statement as to jurisdiction herein, and in support of Appellee's motion to dismiss or affirm, respectfully shows the following:

I

Statement of Issue on Appeal

The only issue presented by the appeal is whether Appellants have constitutionally guaranteed rights to enter upon, assemble upon and make addresses upon Appellee's undedicated private property without the consent and over the protests and objections of Appellee.

II

The Facts

The Lake Jackson picnic grounds belong to Appellee and have never been dedicated to public use by either express or implied dedication. Appellee bought, improved and maintains the picnic grounds, paying for taxes, insurance, roads, policing, caretaking, maintenance and repairs. (See S. F. 3-22, 273-277, 325-326, 332-336, 383, 485-498, Plaintiff's Exhibits 9 and 10). The Appellee established and maintains these picnic grounds for the social and recreational use of the company, its various departments, its employees and their friends. The Appellee has always maintained, reserved, and exercised the absolute right to grant or deny use of the picnic grounds as, in its discretion, it sees fit; to reserve exclusive use of the picnic grounds for itself or to any group or organization granted exclusive use thereof for a particular occasion; and to exclude any groups or individuals from use of the picnic grounds when it sees fit. (See S. F. 13-19, 95-104, 132-133, 336-337.) Families and individuals have been permitted to use the picnic grounds, to have picnics without formal permits, but large groups and all organized groups, such as churches and clubs, have been required to procure formal written permits before using the picnic grounds. (See S.F. 14-16, 68-80, 95-97, 326, 328, 338-341, 356-363, 366-369, 375-378, 381.)

The land in question is located in the open countryside some two or three miles from the town of Lake Jackson. The only entry to the land is through a cattle guard entry way on the Appellee's private road. At this cattle guard entrance there is a large sign placed there by Appellee approximately ten years ago, reading: "Posted. No Trespassing. Hunting, Fishing, Shooting, Prohibited." (See S. F. 5-7, 10-11, Plaintiff's Exhibits 1 and 3). This fenced-in road continues for several hundred yards through cattle lands to a bridge over Appellee's fresh water canal. The

fresh water canal bridge leads to a private road of Appellee which turns to the left beyond the bridge and leads on to the picnic grounds in question. The picnic grounds cannot be reached in any other manner. (See S. F. 7-10, Plaintiff's Exhibit 3, 97-99).

The Lake Jackson picnic grounds and the roads and lands in question are not located within any town or city. There are no stores, business establishments, schools, churches, or other structures evidencing the existence of any kind of town in the area where the picnic grounds are located. The picnic grounds are simply a timber tract of land adjoining a body of water known as Lake Jackson. Beyond the picnic grounds there are a number of private residences located on tracts of land out of the Lake Jackson Farms Subdivision sold by Appellee to its employees. (See S.F. 62-66, 106-110, 277, 289-290.)

The City of Lake Jackson, the corporate limits of which are located between two and three miles from the picnic grounds and the road in issue, is not a company owned town. It is a legal, municipal corporation under the laws of the State of Texas, having an elected mayor and city council, an office for the city government, public streets and public schools, and other public facilities. It levies and collects taxes to maintain its public streets and to carry on its other municipal functions. It has the general run of various types of business houses in addition to its residential area. There are many property owners in the city of Lake Jackson other than Appellee. Furthermore, there is a dedicated public park containing 22 acres of land located in the city of Lake Jackson and readily accessible to and used by its residents. (See S.F. 271-273, 279-287, Defendants' Exhibit 18, 383-385.)

Appellants, who are all members of a religious group known as Jehovah's Witnesses, persistently and repeatedly entered Appellee's private roads and picnic grounds and conducted public meetings thereon without Appellee's per-

mission and over the express protests and objections of Appellee. (See S. F. 140-145, 157-161, 170-177, 217-233, 268-271, 288-329, 393-398, 441-454, 483-484, Plaintiff's Exhibits 7 and 8.) Appellants, even at the hearing on the application for permanent injunction, expressed a fixed intention and determination to continue trespassing on Appellee's property unless they were enjoined from doing so. (See S.F. 448-453).

III

No Substantial Federal Question Is Presented by the Appeal

This is not a constitutional law case. The only issue there has ever been in the case is whether the picnic grounds have been impliedly dedicated to public use or whether facts "equal to such dedication" exist. The facts and the law of Texas are so overwhelmingly against Appellants on this issue that the issue has long since been abandoned by them. They now contend, in effect, that they have constitutionally guaranteed rights to enter upon, assemble upon and speak upon the Appellee's private, non-dedicated picnic grounds even though no dedication to public use and no facts "equal to such dedication" exist.

Appellants seek to invoke *Niemotko* v. *Maryland,* 340 U. S. 268, and *Hague* v. *C. I. O.,* 307 U. S. 496. The *Niemotko* case and the *Hague* case are *public park* cases. They do not govern here. This is a *private* picnic ground case. The *Niemotko* case involved only the prohibiting of a public assembly and public address in a municipally-owned public park in Havre de Grace, Maryland, and the *Hague* case involved only the prohibiting of public meetings and public addresses on the municipally owned public streets and public parks of Jersey City—all dedicated to public use.

Appellants' real effort is to secure an extreme extension of the doctrine of *Marsh* v. *Alabama,* 326 U. S. 501, and *Tucker* v. *Texas,* 326 U. S. 517. The *Marsh* and *Tucker*

cases are not controlling here. The United States Supreme Court in those cases considered that the facts were *equal to dedication.* The court later so stated in *Breard* v. *City of Alexandria,* 341 U. S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, in which the court stated at 341 U. S. 643, 95 L. Ed. 1248: "In the Marsh Case it was a private corporation, in the Tucker Case, the United States, that owned the property used as permissive passways in company and government-owned towns. In neither case was there dedication to public use but *it seems fair to say that the permissive use of the ways was considered equal to such dedication.*" (Italics ours.)

The facts in this case do not establish a case "equal to such dedication". There is no company-owned town with all of the characteristics of an ordinary American town involved. There is involved a private picnic grounds on fenced-in, enclosed, undedicated, private lands located in a rural area several miles from the nearest town and accessible only by travel across cattle guards over private roads.

The controlling cases are *Watchtower Bible and Tract Society, Inc.* v. *Metropolitan Life Ins. Co.,* 297 N. Y. 339, 79 N.E. 2d 433, certiorari denied 335 U. S. 886, rehearing denied 335 U. S. 912, and *Hall* v. *Virginia,* 188 Va. 72, 49 S.E. 2d 369, appeal dismissed 335 U. S. 875, rehearing denied 335 U. S. 912. In each of these cases Jehovah's Witnesses sought to extend the doctrine of the *Marsh* and *Tucker* cases to undedicated private property—the enclosed hallways and inner-areas of apartment houses. The United States Supreme Court refused so to extend the doctrine.

The case at bar is but another attempt by Jehovah's Witnesses to pierce the constitutional right of privacy in the peaceful enjoyment and possession of undedicated private property with a constitutional privilege of trespass in the name of freedom of religion. It is but another attempt to stretch and extend the *Marsh* and *Tucker* cases from public land—dedicated or "equal to such dedication"—to un-

dedicated private lands. The Appellants cannot bridge this chasm. The United States Supreme Court closed the door on such an invasion of private property by its action in the *Hall* case and the *Metropolitan Life Insurance Company* case. It made it clear in *Breard* v. *Alexandria* that the court had not intended to leave any such door ajar in the *Marsh* and *Tucker* cases. If the *Marsh* and *Tucker* cases could be originally construed as leaving such a door ajar, the door has definitely been closed by *Hall* v. *Commonwealth*, the *Metropolitan Life Insurance Company*, and *Breard* v. *Alexandria*. In the *Hall* case and the *Metropolitan* case the United States Supreme Court refused to permit the very creeping encroachment which is again sought in the case at bar. The appeal presents no substantial Federal question.

WHEREFORE, Appellee moves that the within appeal be dismissed or that the judgment and decree of the Court of Civil Appeals for the First Supreme Judicial District of Texas be affirmed.

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